IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOEL D. WILSON, pro se,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MARTIN L. DRAGVOICH, Superintendent, and MARVA CUERROLLO, Health Care Administrator,	:	
	:	
Defendants.	:	**NO. 96-2635**

M E M O R A N D U M

Reed, J. **December 31, 1997**

Plaintiff, Joel D. Wilson ("Wilson"), proceeding *pro se*, is currently incarcerated at the State Correctional Institution at Mahanoy (hereinafter "SCI-Mahanoy"). Wilson brought this civil rights action under 42 U.S.C. § 1983 ("Section 1983"), claiming that his Eighth Amendments rights were violated by defendants Martin L. Dragvoich, Superintendent of SCI-Mahanoy, and Marva Cuerrollo, Health Care Administrator of SCI-Mahanoy.[1] The defendants have filed a motion for summary judgment (Document No. 19), which is currently before the Court. The response of Wilson to defendants' summary judgment motion also contains his own motion for summary judgment and default judgment (Document No. 24). For the reasons set forth below, I will enter summary judgment in favor of defendants and against Wilson.

[1] The correct spellings of defendants' names are Martin L. Dragovich and Marva Cerullo.

I. BACKGROUND

Wilson was transferred to SCI-Mahanoy in July 1994. Prior to his transfer, he underwent two medical examination where a physician determined that his back was normal and concluded that he suffered from lower back strain. He received a Motrin prescription for the pain. Since April 1995, Wilson has been confined to the restricted housing unit ("RHU") at SCI-Mahanoy.

Wilson's Section 1983 claim is premised on his allegation that he received improper medical treatment for his neck and back pains and that he was deprived of sufficient amount of food to sustain his body weight. His neck and back pains arise from injuries he received in two separate car accidents prior to his incarceration.

Wilson attaches to his motions and memoranda numerous "Grievance" or "Request" forms that he submitted over a period of time to various prison officials, including defendants. These requests and grievances primarily involve his concerns that the aspirin or medication given to him by the physicians was not relieving his back pain, that he should receive physical therapy for his injuries as he did before he was incarcerated, that he should be given "extra comfortable bedding" for his back pain, that he had a rash despite the physician's diagnosis to the contrary, that he should not be instructed to exercise to strengthen his back especially when he has been assigned to "medical lay-in", that he is losing weight, that he told nurses of chest pain and coughing up blood, but was not given medical attention, that he should be examined by different physicians, and that he is not getting proper medical care for his back pain. (See Pl. Ex. - Request/Grievance of 1/10/96;

2/14/96; 3/14/96; 3/19/96;3/29/96; 5/10/96; 6/9/96; 6/14/96; 6/19/96; 6/21/96; 6/28/96; 7/18/96; 7/23/96; 7/25/96; 8/5/96; 9/11/96; 9/27/96; 10/14/96; 12/9/96; 1/10/97).

Defendants submit medical records of Wilson that indicate that he was seen by medical professionals (*i.e.*, physicians, nurses, or physician assistants) at least once a day during his RHU confinement. (Def. Exs. D-1, D-2, D-3).[2] In their memorandum, defendants, citing to relevant evidentiary medical records, represent that Wilson had been seen by medical professionals 111 times in 1994, 358 times in 1995, and 486 times in 1996. (See Def. Exs. D-1, D-2, D-3 - Dispensary Cards 1994-1996). He frequently received treatments and medications consisting of Motrin, Tylenol, Ecotrin, BenGay, bed rest (also called medical lay-in), and recommendations to exercise in order to strengthen his back. (Def. Exs. D-3, D-5, D-6, D-7). X-rays were taken of his back and right shoulder, which showed no evidence of injury or disease. (Def. Ex. D-4)

Wilson requested a low fat diet and received it from July 1995 through August 1995. (Def. Ex. D-2). Wilson admits in his memorandum that he requested to be put on a low-fat diet because the regular food had "too much grease, . . . and it was causing pain to [his] chest and stomach." (Pl. Mem. at ¶ 6). When he was weighed in February 1996, it was noted that he had a preoccupation with his weight and nutrition. (Def. Ex. D-3 at 2/13/96). The medical professionals monitored his weight in the ensuing months, and found it to be within the normal limits. (Def. Ex. D-3, D-10).

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[2] Wilson argues that medical professionals did not come see him at least once a day. This conclusory statement, without further evidentiary support, will not create a genuine issue of material fact to defeat a summary judgment motion. See Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982) (non-moving party may not rely merely upon bare assertions, conclusory allegations or suspicions). However, even assuming that Wilson was not visited by medical personnel daily, the evidentiary record is replete with instances where he was examined by medical personnel, and thus my analysis is not altered in any way.

II. STANDARD FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(c) instructs a court to enter summary judgment when the record reveals that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is inappropriate if the admissible evidence reveals a genuine factual dispute requiring submission to a jury. Summary judgment may not be granted where the evidence is such that a reasonable jury could find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A court must consider the evidence, and all inferences drawn from the evidence, in favor of the nonmoving party. See Ting Corp. v. Dow Corning Corp., 822 F.2d 358, 362 (3d Cir. 1987). In a conflict arises between the evidence presented by the parties, the court must accept as true the allegations of the nonmoving party. Anderson, 477 U.S. at 255.

III. DISCUSSION

In Estelle v. Gamble, the Supreme Court of the United States held that the Eighth Amendment imposes an obligation on the government to "provide medical care for those whom it is punishing by incarceration." 429 U.S. 97, 103 (1976). Recognizing that an inmate is forced to rely on prison authorities to treat his medical needs, the Court concluded that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." Id. at 104 (quoting Gregg v. Georgia, 428 U.S. 153, 182-83 (1976)). This duty applies to prison officials providing prisoners access to medical personnel. Id.

The Court of Appeals for the Third Circuit has interpreted Estelle as

establishing a two-part test that "requires deliberate indifference on the part of prison officials and [that] requires the prisoner's medical needs to be serious." Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988) (internal quotations omitted). Deliberate indifference to medical needs is manifested where the defendant has knowledge of the prisoner's need for medical care, and intentionally refuses to provide such care. Id. at 347.

Not all inadequate medical care claims rise to the level of a constitutional violation. Allegations of malpractice do not raise issue of a constitutional dimension. Estelle, 429 U.S. at 106; White v. Napoleon, 897 F.2d 103, 108 (3d Cir. 1990). "Simple malpractice under a common-law negligence standard, without some more culpable state of mind, is not inconsistent with evolving notions of decency merely because it occurs within the four walls of a prison." Sample v. Diecks, 885 F.2d 1099, 1109 (3d Cir. 1989).

In the instant case, there is no dispute that Wilson complained of pain to his back and neck and sought and received medical treatment. Defendants responded to all of Wilson's grievances and/or requests. Defendants never altered or intervened in any way the treatment plans of the medical professionals. While defendants reviewed the treatment plans, they deferred to the judgment of the treating medical personnel. Prison officials cannot be considered deliberately indifferent to a prisoner's serious medical needs merely for refusing to question the judgment of a prison doctor, particularly when the medical condition is not serious. See Durmer v. O'Carrroll, 991 F.2d 64, 69 (3d Cir. 1993) (holding that nonphysician defendants cannot be considered deliberately indifferent because they failed to respond directly to medical complaints of prisoners who were being treated by

prison doctors).

Wilson's own evidentiary submissions reveal that he was examined by physicians on numerous occasions and prescribed a variety of treatments, including medications (such as Tylenol, Motrin), medical lay-in, and stretching exercises. In addition, X-rays were taken of his back and right shoulder. Because Wilson's pain persisted despite these treatments, he argues that he has not received proper medical care. Wilson apparently believes that he should have been given physical therapy, equipped with proper bedding, and seen by different physicians. It is well established, however, that an inmate has no constitutional right to medical treatment he thinks is appropriate or requests. See Hull v. Dotter, CIV.NO.96-3087, 1997 WL 327551, at *4 (E.D. Pa. June 12, 1997) ("[M]ere disagreement with the type of medical treatment provided does not rise to the level of an Eighth Amendment violation." (citing White, 897 F.2d at 110)); Holly v. Rapone, 476 F. Supp. 226, 233 (E.D. Pa. 1979). The refusal of defendants to permit Wilson to seek treatment from different physicians or undergo physical therapy for his back and neck does not evince "unnecessary and wanton infliction of pain." Estelle, 429 U.S. at 104.

Wilson presents no evidence or expert testimony to establish that he should have received a more aggressive or alternative course of treatment than the one he received. I find that a reasonable jury could not conclude that defendants intentionally or wantonly deviated from the ordinary standard of care for Wilson's injuries. Wilson's claims against defendants, at most, amount no more than allegations of "[n]eglect, carelessness, or malpractice . . . [which are] . . . more properly the subject of a tort action in the state courts." Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1081 (3d Cir. 1977). Even when

viewing the facts in a light most favorable to Wilson, I find that a reasonable jury could not conclude that the actions of defendants establish reckless or deliberate indifference on the part of any of the defendants.

Prison officials must ensure that inmates receive adequate food. Farmer v. Brennan, 511 U.S. 825, 832 (1994). With respect to Wilson's claim of food deprivation, the evidentiary record shows that his weight was monitored regularly and was found to be in the normal range, although at times Wilson was 6.5 pounds overweight. Upon a review of the record, I find that there are no genuine issues of material fact as to the adequacy of the food diet, in terms of both nutrition and quantity, provided to Wilson. Wilson argues that when he was first incarcerated, he weighed 172 pounds. Even assuming that this is true, weight loss will not amount to a constitutional violation when there is evidence that Wilson is still within the normal weight range for his sex and height. Wilson has presented no evidence that his medical needs were serious as a result of his purported insufficient diet. Nor has he presented evidence that defendants were deliberately indifferent to his dietary needs. Therefore, his conclusory allegations will not defeat a summary judgment. See DuFresne, 676 F.2d at 969.

Accordingly, I will enter summary judgment in favor of defendants and against Wilson.

An appropriate Order follows.

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JOEL D. WILSON, pro se,	:	**CIVIL ACTION**
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Plaintiff,	:	
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MARTIN L. DRAGVOICH, Superintendent, and MARVA CUERROLLO, Health Care Administrator,	:	
	:	
Defendants.	:	**NO. 96-2635**

O R D E R

AND NOW, on this 31st day of December, 1997, upon consideration of the motion defendants Martin L. Dragovich and Marva Cerullo for summary judgment pursuant to Federal Rule of Civil Procedure 56(c) (Document No. 19), and the response of *pro se* plaintiff Joel D. Wilson which also contains his own motion for summary judgment and default judgment (Document No. 24), and having reviewed all affidavits, admissions on file, and other evidence submitted therein, and for the reasons outlined in the foregoing memorandum opinion, it is hereby **ORDERED** that the motion of defendants is **GRANTED** and the motion of plaintiff is **DENIED**.

IT IS FURTHER ORDERED that **JUDGMENT IS ENTERED** in favor of defendants Martin L. Dragovich and Marva Cerullo and against plaintiff Joel D. Wilson.

This is a final Order.

LOWELL A. REED, JR., J.